IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO. 38 OF 2006

Shakil Abu Bakar Mujarwar ... Petitioner

Versus

Sanjay Shripat Marathe ..
Respondents

Mr. M.B. Kale for the petitioner.
Mr. P.B. Pawar for the respondent.

CORAM: **J.N. PATEL, Ag. C.J.**
DATE: **MARCH 16, 2007**.

P.C.

The learned counsel for the petitioner undertakes to deposit in this Court a sum of Rs.3,000/- towards process fee under clause 12 of the Scheme of Appointment of Arbitrators by the Chief Justice of Bombay High Court Scheme, 1996, within a period of two weeks.

2. The petitioner has approached this Court seeking appointment of an Arbitrator under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (hereinafter “the Act”).

3. It is the case of the petitioner that he had entered into a partnership with the respondent in order to carry on business of

assembling of electronic and electrical industrial parts/instruments under the name and style of “Flex Solution” in Flat No. X-20, Gala No. 2/3, near Sudham Pratisthan Ground, MIDC residential zone, Dombivali (East), Taluka Kalyan, District Thane.

4. It is submitted that clause 14 of the deed of partnership provides for referring the dispute, if any, arising out of the said partnership business. It is the case of the petitioner that as there was dispute between the petitioner and respondent relating to the Deed of Partnership dated 19th November, 2003, and the Deed of Partnership-cum-Retirement dated 20th February, 2006, a notice dated 17th March, 2006, was sent to the respondent, through his advocate, informing the respondent of his invoking the arbitration clause i.e. Clause 14 of the Deed of Partnership. No reply was given to the notice issued by the petitioner. The respondent has been served with a notice of this application under Section 11 (6) of the Act. Rather than agreeing for referring the dispute to an Arbitrator, the respondent has taken a stand that all claims are settled and no dispute arises. One of the grounds taken in the reply is that the proceedings are not maintainable as the partnership firm was not registered as required under Section 69 (2A) of the Indian Partnership Act, 1932, and, therefore, the petition deserves

to be rejected summarily.

5. The learned counsel appearing for the petitioner submitted that the petitioner has moved an application before this Court for appointment of an Arbitrator in terms of clause 14 of the Deed of Partnership which clearly makes out a case that the parties had agreed to refer any dispute arising out of the transaction to an Arbitrator and as this is an application, the bar of Section 69 (2A) of the Indian Partnership Act , 1932, will not arise and, therefore, there is no legal impediment in allowing the application. In support of this contention, the learned counsel for the petitioner has placed reliance on a decision of the Supreme Court rendered in the case of *Firm Ashok Traders and another* vs. *Gurumukh Das Saluja and others* [(2004) 3 SCC 155]. Though the authority is on an application made under Section 9 of the Act of 1996, the ratio squarely applies to the application under Section 11 (6) of the said Act.

6. In the case of *Masood Mohmmed Husain* vs. *Gulam Rasul Mohammedali* Shaikh [2007 (2) Mh. L.J. 116], this Court also had an occasion to deal with the issue of maintainability of application under Section 9 of the Act of 1996, and after considering various decisions

found that the exception carved out in the case of Firm Ashok Traders, the bar of Section 69 (2A) of the Partnership Act, 1932, does not apply in such a case, though it dismissed the appeal on facts. In sum and substance, though the bar under Section 69 (2A) of the Partnership Act may not apply in the case of the petitioner approaching this Court under Section 11 (6) of the Act of 1996, that does not preclude the respondent from raising the issue before the Arbitrator in the arbitral proceedings. Therefore, this Court finds that the petitioner has made out a case for appointment of an Arbitrator.

7. Considering the nature of the dispute, this Court appoints Mr. M.P. Rao, Advocate, practising in this Court as an Arbitrator. The petition stands disposed of accordingly.

ACTING CHIEF JUSTICE